

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

INTELLECTUAL VENTURES I LLC, et al.,
Plaintiffs,

vs

Civil Action
No. 14-220

ERIE INDEMNITY COMPANY, et al.,
Defendants.

Transcript of proceedings held on November 7, 2014,
United States District Court, Pittsburgh, Pennsylvania, before
the Honorable Mark R. Hornak, U.S. District Court Judge.

APPEARANCES:

For the Plaintiff:

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For the Defendants:

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P R O C E E D I N G S

(Telephonic status conference.)

THE COURT: Good morning, everyone.

This is Mark Hornak in Pittsburgh. Present with me in the conference room is one of my law clerks, Miss Bethany Lipman, and our court reporter today is Miss Shirley Hall.

Miss Hall, we're here on simultaneous telephone status conferences in the following civil actions: First on the Erie docket, 14-220; next on the Pittsburgh docket, 14-1130; and finally on the Pittsburgh docket, 14-1131.

I'm advised that on the phone we have for the Plaintiff Mr. Sneath who is here in Pittsburgh; Mr. Hurt in Irving, Texas; Mr. Gilliland of Daingerfield, Texas; Mr. Chin also in Irving; Mr. Voss of Irving.

We have Mr. Marcus in Los Angeles; is that correct, sir?

MR. MARCUS: Yes, Your Honor.

THE COURT: Mr. Elken, who is here in Pittsburgh; we have -- is it Mr. or Ms. Perlson, Paulson --

MS. PAULSON: Yes, Your Honor. It is Paulson. I apologize.

THE COURT: That's okay. Which firm are you at?

MS. PAULSON: WilmerHale.

THE COURT: Which office?

MS. PAULSON: In the Boston office, Your Honor.

1 THE COURT: Mr. Marcus, you are in Los Angeles right
2 now?

3 MR. MARCUS: Yes, I am, Your Honor. It's already a
4 nice day here.

5 THE COURT: I'll try and do a little better of being
6 attentive to the time differences.

7 Is there anybody who is on the call that I've not
8 identified by name?

9 MR. LANTIER: Yes, Your Honor, this is Greg Lantier
10 from WilmerHale.

11 THE COURT: Okay. Mr. Lantier, which office are you
12 in?

13 MR. LANTIER: The Washington D.C. office, Your Honor.

14 THE COURT: We've covered all of Route 95.

15 Anybody else?

16 MR. STROYD: Your Honor, Art Stroyd on behalf of
17 Old Republic.

18 THE COURT: Good morning, Mr. Stroyd. Good to hear
19 from you, sir.

20 MR. STROYD: Yes, indeed.

21 And I believe also on the call is Vernon Winters with
22 Sidley Austin, and they're from the San Francisco office; and
23 Russell Cass, also Sidley Austin, in their Chicago office.

24 MR. WINTERS: We're in the San Francisco office.

25 THE COURT: Good morning, Mr. Winters and Mr. Cass.

1 Mr. Winters, I apologize also for the early time of
2 this call. We'll do better the next time around.

3 MR. WINTERS: Your Honor, thank you; this time is
4 fine.

5 THE COURT: Anybody on the call that I have not
6 mentioned?

7 Okay. Well, thank you, everyone. So that both I can
8 retain what remains of my sanity and Ms. Hall also, if anyone
9 speaks, if you could identify yourself by name first so that we
10 can make sure the record is accurate.

11 We're here today because in the Erie case, 14-220,
12 Intellectual Ventures versus the Erie family of companies, at
13 ECF Docket 36 there was a filing by the Defendants requesting a
14 status conference and indicating that they thought it was a
15 good idea. I then entered an order after checking to see if
16 anybody had any big concerns so that we did the status
17 conference at the same time in all three cases. So that's what
18 brings us here.

19 So in fairness, Mr. Ebken, you or one of your
20 delegates or colleagues, perhaps more accurately, what do you
21 think we ought to be talking about today? And how can the
22 Court be helpful?

23 MR. EBKEN: Sure. And, Mr. Lantier, would you like
24 to take the lead on addressing Mr. Hornak's question --
25 Judge Hornak's questions?

1 MR. LANTIER: Sure, I would be happy to. This is
2 Greg Lantier from WilmerHale, as indicated, on behalf of the
3 Erie and Highmark sets of Defendants.

4 Your Honor, I think there are two issues for today
5 that we tried to preface in the motion that we filed. One is
6 that there was a motion to dismiss on the basis of 35 USC
7 Section 101 filed in the Old Republic matter a couple of weeks
8 ago. We have the day before yesterday filed our own motion to
9 dismiss, which with respect to two of the patents raises the 35
10 USC 101 issue and also raises some additional bases on which we
11 believe some or all of the complaints filed by Intellectual
12 Ventures should be dismissed. So we were hoping or wondering
13 if Your Honor would entertain coordination in terms of any type
14 of hearing as to those motions as they do raise common issues.

15 The second --

16 THE COURT: Let's stop right there for one second,
17 Mr. Lantier. Is there anybody on the call on behalf of any
18 party anywhere in any of these three cases that thinks that the
19 Court should not take up any motions to dismiss, cross motions
20 that might be filed, briefing, argument in each of these three
21 cases at the same time?

22 That is -- and, Mr. Lantier, as you probably know
23 from looking on the Web site or perhaps from speaking with
24 Mr. Ebken or others, I routinely have oral argument on any case
25 dispositive motion, any motion for the award of attorney's

1 fees, or any motion involving the disqualification of counsel
2 or a law firm; and it certainly appears that I would set oral
3 argument in this case. So assuming that I have oral argument,
4 is there anyone on the call on behalf of any client that thinks
5 that I shouldn't take these up all at the same time?

6 MR. GILLILAND: Your Honor, this is Derek Gilliland
7 with Intellectual Ventures.

8 On behalf of Intellectual Ventures -- and I'm not
9 speaking out because I do not think you should take them up at
10 the same time, just for one point of clarification. We have
11 not filed our responsive briefing to any of the motions to
12 dismiss that have been filed and, in addition to coordination
13 of the hearing, we would be in favor of just coordinating the
14 briefing schedule as well.

15 THE COURT: And, Mr. Gilliland, you're certainly
16 singing out of the songbook that I like to follow. I think
17 it's easier when there are similar matters and similar issues
18 if we can have coordinated briefing -- we'll figure it out here
19 at the courthouse. But just when there are so many counsel and
20 parties, so that you can all know who's supposed to be doing
21 what to whom, that's certainly a matter I think that would be a
22 good idea.

23 So subject to sort of that grace note that we do what
24 we can to coordinate briefing and have oral argument all on the
25 same day and make sure everyone has their fair say, bite it off

1 all at one time, does anyone think that doing that would
2 materially prejudice the interests of their clients?

3 MR. LANTIER: The answer, Your Honor -- this is
4 Greg Lantier, Your Honor.

5 From our perspective, obviously no, given the motion
6 we filed, but I did want to just clarify one point.

7 THE COURT: Sure.

8 MR. LANTIER: In terms of the coordination of
9 briefing, I think that the Defendants would want to at least
10 for now hold open the possibility of filing separate reply
11 briefs because their respective motions raise different
12 grounds --

13 THE COURT: No, no. What I took Mr. Gilliland as
14 implicit in his suggestion is that we'll pick a date that all
15 of the response briefs to motions to dismiss will be due by and
16 then we'll pick a date that any reply brief that anybody is
17 going to file will be due by, and that way everyone just has to
18 mark two dates on their calendar rather than six.

19 Was that implicit in your thought, Mr. Gilliland?

20 MR. GILLILAND: Your Honor, this is Mr. Gilliland.

21 And, yes, that's what I meant, was coordination of
22 the dates, not combining of the briefs.

23 THE COURT: And, Mr. Lantier, does that work for you?

24 MR. LANTIER: Yes, Your Honor.

25 THE COURT: With that little amendatory observation,

1 does anyone think if we follow that procedurally it creates a
2 prejudice to any of their clients?

3 (No response.)

4 THE COURT: Five seconds of silence is good for the
5 Court to conclude that there are no objections, and that's
6 exactly how we'll treat that topic and I'll enter an order that
7 confirms that for everyone. But substantively that's what
8 we're going to do on that point.

9 Mr. Lantier, you had a second item on your list.

10 MR. LANTIER: Yes, Your Honor. And this is a bit
11 more long term, but in the same line of thought. These cases
12 are not -- they can't be consolidated with each other for all
13 purposes because 35 USC Section 299, which was part of the
14 recent America Invents Act, would preclude consolidating them
15 for trial purposes. But I think that consistent with our
16 experience and perhaps Your Honor's experience in other cases
17 where the same patents are being asserted, they sometimes are
18 treated along together for at least pretrial discovery
19 purposes.

20 So, for example, there wouldn't be two Markman
21 hearings, there would be one Markman hearing; and the fact
22 discovery deadline would be at the same time for each of the
23 cases, et cetera. And from the perspective of Erie and
24 Highmark, we believe that that would be an efficient way for
25 Your Honor to handle these related cases here.

1 THE COURT: Okay. And before we hear from one of the
2 fleet of lawyers for Intellectual Ventures, Mr. Stroyd on
3 behalf of Old Republic or Mr. Winters or Mr. Cass, obviously
4 preserving the congressional dictates of the Americans --
5 America Invents Act, what does Old Republic think about
6 Mr. Lantier's suggestion in that regard?

7 MR. WINTERS: Your Honor, this is Vern Winters of
8 Sidley for Old Republic.

9 The parties have discussed this as a philosophical or
10 matter of principle, and I think we're in general agreement --
11 and that if I'm wrong about this, my colleagues can speak up --
12 but in general agreement it would be appropriate for the Court
13 in terms of scheduling dates in the case to observe the same
14 schedule in each of the three. And, in particular, I think the
15 parties are in agreement that one Markman makes sense for all
16 on this call, including the Court.

17 THE COURT: Okay. And who -- Mr. Sneath, I'll let
18 you tell the Court who I should look to as the lead
19 spokesperson this morning for Intellectual Ventures.

20 MR. SNEATH: Mr. Gilliland on that issue.

21 Mr. Gilliland.

22 THE COURT: Mr. Gilliland, what do you think about
23 that?

24 MR. GILLILAND: Your Honor, thank you. And as
25 Mr. Winters had said, there has been some conversations between

1 the parties, and we are in agreement for consolidation for all
2 pretrial purposes. We think that's the most efficient way to
3 handle it.

4 THE COURT: Okay. Let's try the five second test
5 again. If I enter an order that consolidates these proceedings
6 for pretrial discovery and Markman purposes only and confirm in
7 that that if we set conferences and those sorts of things, it
8 will be a single order entered and then we'll see who shows up,
9 and we'll talk about anything that comes up, but we won't have
10 separate dates for motions and briefing varying among the
11 cases, we won't have separate dates for status conferences or
12 those things, unless the parties indicate to the Court that we
13 really should, but that would be on an ad hoc basis, but
14 otherwise we would run the proceedings together at the pretrial
15 through Markman stage at least, does anyone believe that doing
16 that is either contrary to the law or would materially
17 prejudice their clients' interests even if it was consistent
18 with the law?

19 MR. WINTERS: Your Honor, this is Vern Winters at
20 Sidley Austin for Old Republic.

21 The answer is no to both of the Court's questions,
22 with the following caveat. The cases have a certain
23 configuration now and as sometimes happens in patent cases, the
24 scope of the case, any individual case, can expand; and I think
25 that it's well for all of us to recognize that it may be

1 possible if any particular case expands, whether that's against
2 Erie, Highmark or Old Republic, we may need to revisit this
3 issue at that juncture. I don't know that necessarily will
4 happen. I think Mr. Gilliland knows more about that than
5 anyone else on the call. If that happens --

6 THE COURT: In viewing that as the most interlocutory
7 form of any interlocutory order and one if at any point, either
8 just for sound case management purposes or something comes up
9 that could cause consolidation of a specific event or matter to
10 cause some either unanticipated or particular prejudice, then
11 the Court views it as its obligation to reconsider that matter.
12 So it is not in the speak now or forever hold your peace
13 category.

14 Does that cover the concern that you think might
15 potentially be out there Mr. Cass?

16 MR. WINTERS: Thank you, Your Honor. I think it is
17 mostly a matter of good order and thinking about theoretical
18 possibilities, but yes.

19 THE COURT: Okay. Mr. Winters, since to counsels'
20 credit you've all talked about this, it sounds as though many
21 of you on the call have worked on other cases with one another,
22 could the Court impose on you, sir, to consult with whoever
23 else you think you need to consult with and draft a proposed
24 order that would implement this early stage consolidation, file
25 it on all three cases -- and it will probably be the last one

1 that anyone will have to file on all three numbers -- or cause
2 it to be filed and then I'll enter it because it will come in
3 as having been concurred in by all the parties.

4 Can you take that task on, Mr. Winters?

5 MR. WINTERS: Your Honor, we will.

6 THE COURT: Okay. Now, just as a little tip off of
7 how it works visually on our docket, once that order is
8 entered, so that -- and I'm not sure how it's handled in other
9 courts. I suspect it's not real different. What will happen
10 is once that order is entered, the order that I'll issue will
11 say that all -- that the cases are consolidated for these
12 purposes at the lowest of the docket numbers. The higher
13 numbers will be shown as administratively closed on the docket.

14 That is no disposition of anything on the merits. It
15 simply allows the parties to file any papers at what will be
16 the lowest docket number, which is the practice within the
17 court, and they will be treated as being filed for all three
18 cases. So that's the optics of what you'll see once that
19 happens, but it allows you to avoid duplicative filing; and
20 everything will be treated when it's filed at that designated
21 docket number as being applicable to all the cases, unless a
22 filing party in their papers specifically says, Judge, we have
23 three arguments. They only apply in this regard. And then the
24 readers on the other side of the case will know that. But that
25 goes more to the substance of the papers rather than the

1 mechanics of the filing.

2 So, Mr. Winters, whenever that comes in, if it uses
3 the word consent or joint, it will be entered in very short
4 order.

5 MR. WINTERS: Thank you, Your Honor.

6 THE COURT: Mr. Lantier, you're two for two.
7 Anything else on your agenda?

8 MR. LANTIER: We didn't have anything else on our
9 agenda, Your Honor. Thanks for holding the hearing this
10 morning.

11 THE COURT: No problem at all.

12 Now let's turn to our folks on the Plaintiff's side
13 of the case. Mr. Gilliland, we'll start with you first, but
14 you're free to lateral to someone else. Do you have a date in
15 mind that you would like me to put in the order that says that
16 the response briefing to the motions to dismiss in each of the
17 three cases is due on X? What would you like X to be?

18 MR. GILLILAND: Well, Your Honor, we -- let's say we
19 got the briefing from Erie and Highmark yesterday or the day
20 before -- I'm looking at my calendar here. I think under the
21 local rules that would put it about around December 2nd; so
22 if we could make our responsive briefing due at the end of that
23 week, December 5? And I'm kind of winging this, so -- but I
24 think that should work and we could get them all done at the
25 same time then unless somebody has a large objection to it. I

1 think our response -- wait a minute, I'm looking at the wrong
2 date. Hold on. I had my calendar on the wrong date -- I'm
3 thinking one, two -- I'm thinking it's due December -- or,
4 excuse me, November -- we've already got an agreement with --
5 wait. I'm getting too many notes passed to me real quick. My
6 apologies, Your Honor.

7 THE COURT: No problem.

8 MR. GILLILAND: Let's say Wednesday, November 26.
9 That will give us a couple days, based on the standard
10 calendar, that that should be more than enough time to get the
11 responsive briefing in.

12 THE COURT: Does anyone think that's not a good date
13 for the responses to the motions to be due, and then the next
14 date we'll pick is date Y, which is the date for any reply
15 briefs? So for the defense side, the moving parties' side,
16 does that create any heartburn if we give the Plaintiffs until
17 Wednesday, November 26th, to respond?

18 (No response.)

19 THE COURT: Okay. Then that will -- we'll put that
20 in my text order. And, Mr. Lantier, we'll start with you, but
21 anybody else on the moving parties' side can weigh in. What do
22 you think about when you'd like your reply briefs due? And as
23 far as I'm concerned, having spent 30 years doing what everyone
24 else on this call does, the 27th, 28th and 29th and
25 30th of November don't count because you're supposed to be

1 with your families eating turkey, watching football or being
2 stuck in an airport moving around the country. So start your
3 clock on Monday, December 1st.

4 MR. LANTIER: Your Honor, I haven't conferred with
5 Mr. Winters or his colleagues on this, so I will want to allow
6 them to speak up as well; but I think if the reply briefs could
7 be due perhaps on Friday, December 12th, that would -- that
8 provides a little bit of extra time to file it. And if
9 Your Honor thinks that's too long, certainly we're happy to
10 follow Your Honor's direction.

11 THE COURT: No, I think it's too short. I think you
12 ought to make them due on Tuesday, the 16th of December,
13 because I am not going to summon lawyers into court between
14 December 19th -- between Monday, December 22nd, and Monday,
15 January 5th, unless someone -- and I don't think it's the
16 case in this case -- is looking for a temporary restraining
17 order. I'm not going to make any lawyers come into Federal
18 Court.

19 If you could file the replies -- file them as early
20 as you want; but if you could file them by Tuesday the 16th,
21 then unless -- if someone tells me they think they're going to
22 have troubles because of a trial schedule somewhere else, we'd
23 probably set argument for sometime the week of January 5th or
24 later in the week of January 19th.

25 I have a criminal trial the 12th that I think will

1 last about a week. But if you could get the replies in by the
2 16th, that gives me plenty of reading time, and then we would
3 tentatively look at an argument date the week of January 5th.
4 What's everyone think about that? Let's hear from the moving
5 party's side first. How does that schedule work for you?

6 MR. LANTIER: Your Honor, this is Mr. Lantier again,
7 and that is a good schedule from our perspective. The one
8 thing that I would mention is Your Honor referred to the week
9 of January 19th. That is the one week in January that would
10 not work for us, but the week of January 5th is good.

11 THE COURT: Okay. What about the -- and,
12 Mr. Lantier, remind me; you represent Erie?

13 MR. LANTIER: Your Honor, we represent Erie and
14 Highmark along with Mr. Ebken and his firm, Gordon & Rees.

15 THE COURT: Mr. Winters, what do you think about
16 arguments sometime the week of January 5th?

17 MR. WINTERS: That sounds good and will work.

18 THE COURT: Mr. Gilliland, I'll keep coming back to
19 you until you tell me not to. From the Plaintiffs' side, what
20 do you think about argument the week of January 5th?

21 MR. GILLILAND: Your Honor, unfortunately for me that
22 is the week of my -- well, fortunately I guess I should say, if
23 my wife would ever read this, but that is the week of my
24 20th anniversary. Otherwise, that week would work, but -- so
25 I'd have to beg off if at all possible, if we could find

1 another week.

2 THE COURT: We will. We'll get a day for you folks.
3 I don't think we'll need a whole day. We'll get you a day in
4 January. What I'll do is take a look at a couple dates and
5 then once the case is consolidated so I only have to enter one
6 order, I'll post several available dates that are not in the
7 week of the 19th and not in the week of the 5th of January,
8 and we'll get you folks in for argument so that we can take it
9 up then.

10 And I'll count for purposes of that conversation the
11 first week of February for these purposes will be in January,
12 and then we'll get you folks all set for the same date. So if
13 we do Wednesday, November 26th, as the date for responses on
14 motions to dismiss in all three cases, not later than Tuesday,
15 December 16th for any replies that anyone wants to file in
16 support of their motion, I'll post some dates for argument,
17 we'll do them all in one shot here in Pittsburgh, and we'll
18 avoid the two weeks that have been identified by counsel.

19 Anyone see a problem with that plan of action?

20 MR. LANTIER: No, Your Honor.

21 THE COURT: Okay. Well, then, that's what we'll do.
22 Mr. Gilliland, let me ask you two other questions, and again
23 you can lateral this to someone else if you think it's the
24 better way to go from your side of things.

25 I noted that when each of these cases were filed on

1 the civil docketing form, on the second page they were all
2 listed -- each of the three cases was listed as a related case
3 to Civil Actions 14-832 and 13-740. I suspect there might have
4 been a recusal or something somewhere in here that did not
5 cause them to go to the same judge, but they've all ended up
6 with me, which is fine, happy to have you -- yes, sir?

7 MR. SNEATH: Your Honor, this is Henry Sneath -- this
8 is Henry Sneath.

9 There was -- Judge Schwab recused himself. I think
10 the related case -- at least the one that we listed was the
11 PNC. You know, some of these were served against PNC and
12 Judge Schwab was assigned these three cases and he recused
13 himself and that's how they are with you.

14 THE COURT: That's fine, that's how it works. And
15 I -- we put together a little chart here to see the overlap of
16 the patents, and it looks as though the '02 patent which is at
17 issue in 832 is also at issue in each of these three cases, and
18 the '298 patent which is claimed to be at issue in the Erie
19 case is also involved in each of those cases.

20 Mr. Sneath, are those cases still stayed because of
21 ongoing administrative proceedings or what's going on with
22 those two related cases or checked as related cases?

23 MR. SNEATH: We were just talking about this this
24 morning. Does somebody know? I think the one might have been
25 stayed. I'm not sure of the current status. Does anybody else

1 know the answer to that? I'm not sure I know right now.

2 MR. GILLILAND: This is Derek Gilliland with the
3 Plaintiff; and we double checked after a conversation I had
4 with Mr. Sneath this morning. I believe the PNC cases are all
5 stayed currently.

6 THE COURT: Okay.

7 MR. LANTIER: Your Honor, this is Greg Lantier.
8 We're involved in the PNC cases, representing PNC.

9 So this -- the status is as follows: There was a --
10 the first civil action was filed in May of 2013. It involved
11 five patents including the '298 patent that is at issue in the
12 Erie case before Your Honor. On behalf of PNC and another
13 financial services institution that was sued in a different
14 jurisdiction by Intellectual Ventures, we moved the Patent
15 Office to reconsider those patents, which they granted with
16 respect to all of the patents except '298.

17 As a result of the motions being filed, the parties
18 before the Patent Office, the parties Intellectual Ventures and
19 PNC, jointly asked Judge Schwab to stay the first civil action
20 until all of the Patent Office proceedings including any
21 appeals are resolved, which Judge Schwab did.

22 The second case was then filed in the middle of 2014,
23 in June of 2014. And that involved the '002 patent before
24 Your Honor. It also -- the '298 patent was again asserted, but
25 again some different PNC related entities and two other patents

1 were included -- three other patents were included as well.
2 Judge Schwab decided to consolidate the second action with the
3 first action, and the result of that is that the stay that was
4 entered in the first action remains in place and will remain in
5 place until the final resolution of those covered business
6 method review proceedings before the Patent Office and the
7 Court of Appeals for the Federal Circuit.

8 THE COURT: Okay. And so the next question that I
9 could not figure out the answer to or the likely answer to on
10 my own is if these three cases are related to those two cases
11 and those two cases are stayed, apparently with some good
12 reason, why wouldn't or shouldn't that stay carry over to these
13 cases? And I'm -- I suspect there's an answer, but I could not
14 readily figure it out.

15 MR. GILLILAND: Your Honor, this is Derek Gilliland
16 on behalf of Intellectual Ventures.

17 And my understanding -- and Greg can correct me if
18 I'm wrong -- but the stay in the PNC case is primarily as a
19 result of either a business method review or interparty reviews
20 having been granted on patents at issue in that case.
21 Currently there are petitions for interparty review of the '298
22 and the '002 patents pending, but those petitions have not
23 reached the stage where the patent owner, Intellectual
24 Ventures, has had to file a response yet and they have not been
25 instituted yet.

1 THE COURT: And they're not at the guts of the reason
2 the other case was stayed.

3 MR. GILLILAND: That's my understanding.

4 MR. LANTIER: Your Honor, if I may --

5 THE COURT: This is Mr. Lantier?

6 MR. LANTIER: Yes. Was that Mr. Gilliland or
7 Mr. Sneath?

8 MR. GILLILAND: This is Derek Gilliland.

9 MR. LANTIER: Sorry, thank you.

10 The original stay in the PNC case was, as
11 Mr. Gilliland said, based on the first set of patents that
12 Intellectual Ventures asserted being put into or petitioned for
13 review before the Patent Office. One slight clarification is
14 that the stay was not -- the stay was entered before -- as is
15 the case here, the stay was entered before Intellectual
16 Ventures responded to the petitions. And Intellectual Ventures
17 was a joint requester of the stay. That's just a slight
18 factual clarification.

19 I think to your larger point, the '002 patent and the
20 '298 patent were not -- those are -- those are separate from
21 the -- well, sorry. Those patents were not directly the reason
22 for the stay of the PNC action. However, I think that
23 depending on how Your Honor decides the motions to dismiss,
24 there may be a similar reason to stay this case in that with
25 respect to the '002 patent and the '298 patent at least there

1 are proceedings before the Patent Office currently which may
2 render those patents invalid. And as Your Honor may be aware,
3 some of the provisions of the America Invents Act support
4 staying of civil actions to allow those expedited validity
5 reviews to take place in the Patent Office. But I believe that
6 at this point it's premature and we would bring any motion to
7 stay to Your Honor's attention at the right time.

8 THE COURT: Okay. That makes sense.

9 Second question. And, Mr. Gilliland, you can answer
10 this or Mr. Sneath -- and this is more curiosity. I couldn't
11 help but notice we now have the appearances of ten -- count
12 them -- ten lawyers for the Plaintiffs in the cases. Is there
13 something I ought to be aware coming down the pike that might
14 require that amount of cavalry or can someone help me have a
15 better understanding why that is? Happy to have you all here,
16 but I'm just curious.

17 MR. GILLILAND: Well, two parts. This is
18 Mr. Gilliland.

19 And, Your Honor, two parts was, one, I was in
20 Pennsylvania not too long ago taking depositions and I
21 explained to them how nice the city is now and everybody wants
22 to see it. And the second part of it is I've run into issues
23 before in cases where we get into depositions that of course to
24 properly question a witness an attorney should have an
25 appearance in the case, so as a -- an initial matter, we just

1 get -- have anybody who might be involved in that process in
2 the case go ahead and file a notice of appearance so that any
3 of the team is available for depositions and other things as
4 the case moves forward.

5 THE COURT: And there's a logic to that and again no
6 objection or problem on the Court's part. It just was sort of
7 record setting in my limited experience. I thought I would
8 check in on that.

9 Let me ask one other question before I see if anybody
10 else has anything to bring up. If we held argument sometime
11 the week of February 2nd, 2015, is anyone aware right now
12 that that week is problematic?

13 (No response.)

14 THE COURT: Okay, we'll probably set a date for
15 sometime that week and we'll have a better sense once we get
16 all the briefs in.

17 Let's start with Plaintiffs' counsel, is there anyone
18 on behalf of Intellectual Ventures that believes there's
19 something we ought to take up today that we haven't spent any
20 time on yet?

21 MR. GILLILAND: Your Honor, this is Derek Gilliland
22 again on behalf of Intellectual Ventures, and I do not have and
23 am not aware of any additional things that we would like to
24 take up.

25 THE COURT: Okay. On behalf of the Erie/Highmark

1 parties?

2 MR. LANTIER: Nothing further, Your Honor, thank you.

3 THE COURT: Okay. And on behalf of Old Republic?

4 MR. WINTERS: Nothing further, Your Honor; this is
5 Vern Winters, thank you.

6 THE COURT: Okay. Miss Lipman, was there anything we
7 intended on speaking with counsel about that we've somehow left
8 off the list?

9 MS. LIPMAN, LAW CLERK: No, Judge.

10 THE COURT: Okay. So we're going to enter a text
11 order that sets all of those response dates and a targeted date
12 for oral argument. Because I sense we may have one or more
13 parties coming from out of town, I'll probably set the argument
14 for either late morning or very early afternoon so that
15 people's travel schedule out of town can be accommodated,
16 unless everyone from out of town is coming the night before, in
17 which case I'm happy to get you going early in the morning.

18 Would that make more sense, Mr. Sneath, what do you
19 think?

20 MR. SNEATH: Well, all I have to do is take a brief
21 walk up the street, so I leave that more to the out of town
22 folks. If it's a Monday, I guess you have to consider Sunday
23 travel for some.

24 THE COURT: Right.

25 MR. SNEATH: I'll let them speak.

1 THE COURT: For the folks out of town, would it be
2 better if we set it for like nine-thirty or ten o'clock, that
3 would let D.C. people come in that morning if they wanted and
4 the West Coasters and Texans to come the night before and get a
5 decent flight out of here in the afternoon. Does that make
6 more sense?

7 MR. LANTIER: Your Honor, this is Greg Lantier. I
8 think given the time of year, we'll probably all come the night
9 before, just because of the risk of travel delays and whatnot.
10 So I wouldn't -- unless others have a different view, I think
11 any time in the morning would be good for the parties.

12 THE COURT: Okay.

13 MR. WINTERS: This is Vern Winters. We echo those
14 remarks.

15 THE COURT: And, Mr. Gilliland, from Texas, does that
16 make sense from your end?

17 MR. GILLILAND: That makes perfect sense, Your Honor.

18 THE COURT: We'll set it for the first thing in the
19 morning and that way folks can get out of town. Anyway, we'll
20 set that case management or that scheduling order. It will be
21 a text order. Then we'll wait to see being filed by
22 Mr. Winters something labeled consent or joint regarding
23 pretrial coordination of these cases. That will lead to
24 another order that will be along the lines that I mentioned.
25 Otherwise, we'll just keep an eye on the docket as the briefing

1 comes in.

2 Now you've all seen this on the court's web site and
3 I know Mr. Sneath and Mr. Eiken as our lawyers here in
4 Pittsburgh are aware of this. If there's a problem that comes
5 up along the way, that's what we're in business here for. All
6 I would ask is that you folks talk amongst yourselves first to
7 identify what the problem is or if there's just something that
8 the Court needs to get involved in, what the agenda would be,
9 agree on that, pick one in your midst to call Miss Lipman and
10 say we need a telephone conference, and we'll do our best to
11 get you scheduled the same day to iron anything out that you
12 think I need to get involved in.

13 Ms. Hall has taken this all down. She's not going
14 make a transcript unless you or your clients need one; and if
15 you do, just contact Ms. Hall directly and she'll be happy to
16 help you out.

17 Ms. Hall, is there anything you need for the record?

18 MRS. HALL, COURT REPORTER: No, there is not, thank
19 you.

20 THE COURT: Is there anyone on the call who has a
21 reason we cannot conclude the conference at this point?

22 (No response.)

23 THE COURT: Well, everyone, thank you for your
24 preparation and consultation with one another. That's what
25 makes the Court's job all the easier. We'll get our orders

1 out. We'll look for your motion. And then we'll be working
2 together over the next couple of months at least, if not
3 longer. If there is a turn of events that makes a stay of some
4 part of this case appropriate given the matters we've heard,
5 I'll rely on counsel to bring that to the Court's attention.
6 Otherwise, we'll just proceed ahead at this end.

7 Thank you all very much.

8 ALL COUNSEL: Thank you, Your Honor.

9 (Concluded at 10:15 a.m.)

10 C E R T I F I C A T E

11 I, Shirley Ann Hall, certify that the foregoing is a correct
12 transcript for the record of proceedings in the above-titled
13 matter.

14
15
16 s/Shirley Ann Hall
17 Shirley Ann Hall, RDR, CRR
18 Official Court Reporter
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